

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
Case Number: 3:12-CV-444-GCM

FILED  
CHARLOTTE, NC  
JUL 03 2013

US District Court  
Western District of NC

PENNSYLVANIA NATIONAL )  
MUTUAL CASUALTY INSURANCE )  
COMPANY, )

Plaintiff, )

v. )

PORTRAIT HOMES – COMMONS AT )  
GRAND OAKS, LLC, and PORTRAIT )  
HOMES – SOUTH CAROLINA, LLC, )

Defendants. )

CONSENT ORDER DISMISSING  
ACTION WITHOUT PREJUDICE

This matter is before the Court upon Motion of Plaintiff Pennsylvania National Mutual Casualty Insurance Company (“Penn National”) requesting this Court to enter a Consent Order dismissing this action without prejudice, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, and making a final decree in this action as stipulated to by Defendants Portrait Homes– Commons at Grand Oaks, LLC, and Portrait Homes – South Carolina, LLC (“Portrait Defendants”).

Upon consideration of Plaintiff Penn National’s Motion, the Stipulation and Waiver of the Portrait Defendants, and the consent of Plaintiff Penn National and the Portrait Defendants to this order as shown by the signatures of the undersigned counsel, the Court hereby finds good cause exists to grant Plaintiff Penn National’s Motion.

It is therefore ordered, adjudged, and decreed as follows:

1. The Portrait Defendants have forever waived any and all rights to liability coverage under the insurance policies at issue in this action which consist of a Commercial General Liability Policy issued by Penn National to JJA Construction, Inc. bearing policy

number GL90601617 which was effective December 5, 2005 to December 5, 2006 (“CGL Policy”), and two renewal policies with effective dates of December 5, 2006 to December 5, 2007 and December 5, 2007 to December 5, 2008 – which policy was subsequently cancelled effective January 31, 2008 (“Renewal Policies”) for claims asserted, or which may be asserted, against the Portrait Defendants in two lawsuits currently pending in the Ninth Judicial Circuit, Charleston County, South Carolina captioned as follows: (1) *Charles L. Atkins, III, et al. v. Portrait Homes-Commons at Grand Oaks, LLC, et al.*, No. 09-CP-10-4427; and (2) *The Commons of Grand Oaks Homeowners Association Inc. v. Portrait Homes-Commons at Grand Oaks, LLC, et al.*, No. 2009-CP-10-4556 (“Underlying Lawsuits”).

2. The Portrait Defendants have forever waived any rights under the CGL Policy or the Renewal Policies that have been, or may be, assigned to the Portrait Defendants with respect to claims asserted in the Underlying Lawsuits.

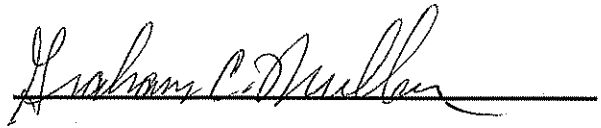
3. Any rights (including any assigned rights that may be asserted by the Portrait Defendants) to liability coverage under the CGL Policy or the Renewal Policies with respect to claims that have been, or may be, asserted in the Underlying Lawsuits are hereby forever waived by the Portrait Defendants, and the Portrait Defendants hereby waive any right to pursue such liability coverage in any manner, including legal action or other proceedings in any jurisdiction (state or federal) in the United States of America.

4. The Portrait Defendants’ Stipulation and Waiver attached hereto as Exhibit A is hereby incorporated herein as an Order of this Court.

5. Upon consent of counsel, this action is dismissed without prejudice.

SO ORDERED.

Signed: July 30, 2013.

A handwritten signature in black ink, appearing to read "Graham C. Muller", is written over a horizontal line.

CONSENTED TO:

/s/Brady A. Yntema

David L. Brown

N.C. State Bar #: 18942

Brady A. Yntema

N.C. State Bar #: 25771

*Attorneys for Plaintiff Pennsylvania National  
Mutual Casualty Insurance Company*

/s/Philip A. Collins

Philip A. Collins

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*Attorney for Defendants Portrait Homes –  
Commons at Grand Oaks, LLC, and Portrait  
Homes – South Carolina, LLC*